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No. 06-639

In the Supreme Court of the United States

DETROIT INTERNATIONAL BRIDGE COMPANY,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court used an unconstitutionally low rate of interest in determining the amount of just compensation owed to petitioner after condemnation of its property.

2. Whether the district court erred in excluding evidence concerning the value that the condemned property might have had if used in combination with neighboring tracts.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 450 F.3d 205. The opinions of the district court (Pet. App. 17a-27a, 29a-52a) are reported at 286 F. Supp. 2d 865 and 188 F. Supp. 2d 747.

JURISDICTION

The judgment of the court of appeals was entered on June 8, 2006. On August 31, 2006, Justice Stevens extended the time within which to file a petition for a writ of certiorari to and including November 5, 2006, and the petition was filed on November 3, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Fifth Amendment to the United States Constitution states that private property shall not be taken for public use "without just compensation." The usual measure of just compensation is the "fair market value" of the property at the time of the taking. See, *e.g.*, *United States* v. *50 Acres of Land*, 469 U.S. 24, 29 (1984). The Declaration of Taking Act (DTA), 40 U.S.C. 3114-3118 (Supp. III 2003), authorizes the federal government to acquire ownership and take possession of condemned property by filing a declaration of taking and paying into the court an amount equal to an estimate of just compensation. 40 U.S.C. 3114(a) (Supp. III 2003). The precise amount of just compensation owed to the property owner is determined in a later judicial proceeding. 40 U.S.C. 3114(c) (Supp. III 2003).

In some circumstances involving delays between the taking of property and the payment of just compensation, courts have construed the Fifth Amendment to require the inclusion of interest in the just-compensation award. See, *e.g.*, *Albrecht* v. *United States*, 329 U.S. 599, 602 (1947); *Seaboard Air Line Ry.* v. *United States*, 261 U.S. 299, 304 (1923).[1] Until 1986, the DTA provided for

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[1] The Court in *Albrecht* explained:

> [I]n cases submitted to them for determination of "just compensation," courts have evolved a rule whereby an element of compensation designated as interest is sometimes allowed. Under this rule, and in the absence of an agreement of the parties fixing compensation, courts first fix the fair market value of property as of the time it is taken. The property owner, against whom there is no counterclaim, is always entitled to payment of this much. But where payment of that fair market value is deferred, it has been held that something more than fair market value is required to make the property owner whole, to afford him "just compensation." This

payment of simple interest at an annual rate of six percent. See 40 U.S.C. 258a (1982). In several cases decided while that version of the statute was in effect, however, courts held that interest in excess of six percent should be awarded. Those courts concluded that, because interest is a component of the just compensation to which the owner of condemned property is entitled by the Fifth Amendment, the court in a condemnation case must determine whether the rate specified by statute is constitutionally adequate. See *United States* v. *50.50 Acres of Land*, 931 F.2d 1349, 1354-1355 (9th Cir. 1991) (discussing cases decided under pre-1986 law).

Since 1986, the DTA has prescribed a fluctuating interest rate that tracks the current market. See *50.50 Acres*, 931 F.2d at 1355. In its current form, the statute authorizes the court to award interest in an amount equal to "the weekly average one-year constant maturity Treasury yield." 40 U.S.C. 3116(a)(1) (Supp. III 2003). That interest is awarded on the difference between the actual amount of just compensation (as determined in the judicial proceeding) and the estimated amount previously paid to the court. See 40 U.S.C. 3114(c)(1) (Supp. III 2003). The DTA further provides for interest to be compounded, and the applicable rate to be adjusted, on an annual basis if interest is owed for more than one year. See 40 U.S.C. 3116(a)(2) (Supp. III 2003).

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additional element of compensation has been measured in terms of reasonable interest. Thus, "just compensation" in the constitutional sense has been held, absent a settlement between the parties, to be fair market value at the time of taking plus "interest" from that date to the date of payment.

329 U.S. at 602 (footnote omitted).

2. The Ambassador Bridge connects Detroit, Michigan, with Windsor, Canada. Pet. App. 2a. Petitioner owns the Bridge, including an associated plaza located in Detroit. *Ibid.* Before 1979, trucks entering the United States awaiting secondary customs inspections on the Detroit side of the Bridge were required to park on the plaza, which contributed to traffic congestion in the area. *Ibid.* By 1979, petitioner had acquired two parcels of land that were near the Bridge but were separated from it by 21st Street (which was owned by the City of Detroit). See *id.* at 2a-3a, 9a. Those two parcels were also separated from each other by a parcel owned by an individual named Nash Sogoian. *Id.* at 3a.

In 1979, the General Services Administration (GSA) initiated a condemnation action to acquire all three parcels located across 21st Street from the Bridge (two owned by petitioner and one owned by Sogoian) for use by the Customs Service as a location for secondary truck-inspection facilities. Pet. App. 2a-3a. GSA filed a declaration of taking and deposited $828,000 as the estimated value of petitioner's condemned parcels. *Id.* at 3a. Since 1979, petitioner has contested the amount of compensation due. *Ibid.* In 1991, petitioner and the government agreed to settle the valuation dispute, but petitioner subsequently became dissatisfied with the government's performance of the agreement and sought to reopen the 1979 condemnation action. *Id.* at 3a-4a. Petitioner's case went to trial on valuation in 2002. *Id.* at 4a.

Petitioner contended that, in determining the amount of just compensation, the jury should be allowed to treat the taken parcels and the Ambassador Bridge as an integrated whole, and to consider the impact of the taking on the value of that whole, including the bridge. See Pet. App. 38a. In determining whether to allow peti-

tioner to present that theory to the jury, the district court framed the relevant inquiry as "whether the property taken consists of one entire cohesive whole"—and, in particular, whether an actual or reasonably foreseeable "unity of use" existed between the parcels at the time of the taking. *Id.* at 40a. In finding the requisite "unity of use" to be absent, the court explained:

> [T]he evidence presented in this case shows that the Government's intention to take the property was made public prior to the time that [petitioner] purchased the parcels of property at issue. [Petitioner] had specific knowledge of the intended taking at least as of December 1976. Moreover, any integrated use of the condemned property with the Bridge was dependent upon the City of Detroit's vacating of 21st Street and Nash Sogoian's sale of his parcel of land to [petitioner]. As of the date of taking, no steps were taken by [petitioner] to effectuate the vacation of 21st Street and [petitioner's] own witnesses testified that Sogoian flatly refused to sell his property to [petitioner]. Furthermore, even [petitioner's] president * * * admitted in his deposition that any integrated use of the property with the Bridge property was merely a "possibility."

Id. at 47a-48a (citation omitted).

Based on those facts, the district court concluded that, at the time of the taking, "there was no reasonable probability of the property in question being combined and used in conjunction with [petitioner's] Ambassador Bridge property in the reasonably near future." Pet. App. 48a. The court further observed that there was no private market for the intended integrated use of the condemned parcels as a customs inspection facility, and

that petitioner was not entitled to enhanced compensation based on any increase in the property's value that was attributable to the government. *Id.* at 48a-49a. The court accordingly instructed the jury that, in determining the just compensation to which petitioner was entitled, the jury could not consider the possibility that the taken parcels would have been "combined with the bridge property next door and used for overall bridge operations." *Id.* at 9a; see *id.* at 52a. The jury awarded petitioner slightly less than $4.1 million as the value of the property in 1979. *Id.* at 4a.

After the trial, the district court rejected petitioner's contention that the court should award interest at a rate higher than the rate specified in the DTA. Pet. App. 17a-27a. The court stated that, "[g]iven the mandatory language of the statute and the very clear legislative history, * * * applying any rate other than the statutory rate formulated in [the DTA] would contravene the clear intent of Congress." *Id.* at 25a. The district court further held that "the outcome would be the same" if the court inquired whether the statutory interest rate was "proper and reasonable." *Id.* at 26a. The court explained that

> the statutory rate of interest set forth in [the DTA] provides [petitioner] what a reasonable and prudent investor would earn while investing though guaranteeing the safety of the principal. The interest rate provided in [the DTA] is not a fixed rate; it is a fluctuating rate that tracks the upward and downward movement of market interest rates, generally. Thus, this method of determining interest is a market-driven rate. Second, an investment in U.S. Treasury securities is safe because an investor will not

> lose the principal underlying the investment, as he would risk doing in the stock or bond market.

Ibid. (citations omitted). In accordance with the district court's ruling, the United States deposited an additional $15,683,327.05 to satisfy the judgment. *Id.* at 5a.

3. The court of appeals affirmed. Pet. App. 1a-15a.

a. The court of appeals held that the district court had not erred in barring petitioner from arguing to the jury that the condemned parcels and the Ambassador Bridge should be considered as a unitary whole and that the parcels therefore should be valued as if the whole were to be used by petitioner in the operation of the bridge. Pet. App. 5a-11a. The court quoted at length from the district court opinion, see *id.* at 6a-7a, 9a-10a, and concluded that "[t]he district court's opinion marshals a number of facts in support of its decision," *id.* at 11a. The court of appeals stated that it "detect[ed] no error in either [the district court's] factual findings or in their application to the subsequent jury instructions." *Ibid.*

b. The court of appeals also rejected petitioner's challenge to the district court's calculation of interest. Pet. App. 11a-15a. After again quoting at length from the district court opinion, see *id.* at 12a, 13a-14a, the court found "nothing to suggest that the district court's adoption of the statutorily required rate constituted clear error," *id.* at 15a. The court of appeals concluded that, "in light of the 'reasonably prudent investor' standard, we decline to reverse the district court's decision with respect to interest rates." *Ibid.*

ARGUMENT

In seeking this Court's review, petitioner attributes to the court of appeals the holdings that (1) the method of computing interest set forth in the DTA is binding on courts adjudicating claims for just compensation, and (2) the government's stated intent to exercise its power of eminent domain can preclude valuation methodologies premised on potential use of the condemned property in combination with other tracts. Contrary to petitioner's contentions, the court of appeals did not endorse either of those propositions. Rather, the court simply affirmed the judgment of the district court. Although the district court's opinions suggest agreement with the views that petitioner finds objectionable, that court also identified other, independent grounds for its decision. Further review therefore is not warranted.

1. Petitioner contends (Pet. 11-20) that the court of appeals erroneously treated as binding the interest-computation methodology established by the DTA. That claim lacks merit and does not warrant this Court's review.

a. From its enactment in 1931 until 1986, the DTA provided for interest at a flat annual rate of six percent, regardless of the economic conditions (including market interest rates) prevailing in the country at a particular time. See Pet. App. 23a, 25a. Before the 1986 amendment to the DTA, the courts of appeals that had addressed the question had uniformly held that, notwithstanding the statute's specification of a six percent rate, the court in a condemnation case could award a greater amount of interest when that was necessary to provide just compensation. See, *e.g.*, *United States* v. *125.2 Acres of Land*, 732 F.2d 239, 244-245 (1st Cir. 1984);

United States v. *329.73 Acres of Land*, 704 F.2d 800, 812 (5th Cir. 1983) (en banc); *United States* v. *Blankinship*, 543 F.2d 1272, 1275-1276 (9th Cir. 1976).

The 1986 amendment to the DTA, which tied the statutory interest rate to the rate of return on specified Treasury bills, reflects Congress's recognition that interest awards in condemnation cases should be tied to prevailing market conditions. In supporting passage of the 1986 amendment, the Congressional Budget Office stated:

> Currently, the interest rate applicable to the taking of real estate is set by law at 6 percent. The courts generally consider this 6 percent rate to be a minimum, and usually apply a higher interest rate (based on market rates). This bill would make this current use of the market rates explicit in the law, and would make their application uniform and consistent among the courts. It also would eliminate the treatment of the interest rate as a question of fact to be determined by the courts.

H.R. Rep. No. 914, 99th Cong., 2d Sess. 3 (1986); see Pet. App. 25a.

Since the 1986 amendment to the DTA, only one other court of appeals has addressed the question whether the district court in a condemnation case may award interest in an amount higher than the statutory rate. See *50.50 Acres*, 931 F.2d at 1355-1356; Pet. 13-14. Although the Ninth Circuit in that case rejected the government's contention that the statutory computation formula should be treated as binding, see 931 F.2d at 1355-1356, it did not hold that the statutory rate was inadequate, but simply remanded the case to the district court for resolution of that question, see *id.* at 1356.

Thus, even if the Sixth Circuit in the instant case had squarely held that the DTA interest rate is binding, the question presented would not be of sufficient recurring importance to warrant this Court's review.

b. In fact, the Sixth Circuit did not purport to resolve the question whether the computation methodology specified by the DTA was binding on the district court. The district court treated the statute as conclusive, stating that "applying any rate other than the statutory rate formulated in [the DTA] would contravene the clear intent of Congress." Pet. App. 25a. As an alternative ground for its decision, however, the district court stated that "the outcome would be the same" if the court were to inquire, in accordance with the Ninth Circuit's decision in *50.50 Acres*, "whether the new [DTA] formula provides a 'proper and reasonable' interest rate." *Id.* at 26a. The court explained that the statutory computation methodology "provides [petitioner] what a reasonable and prudent investor would earn while investing though guaranteeing the safety of the principal," because the DTA in its current form establishes "a fluctuating rate that tracks the upward and downward movement of market interest rates, generally." *Ibid.* The district court also observed that "an investment in U.S. Treasury securities is safe because an investor will not lose the principal underlying the investment, as he would risk doing in the stock or bond market." *Ibid.*[2]

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[2] Petitioner contends (Pet. 18) that, even if the DTA interest formula (which is tied to the rate of return on one-year Treasury bills) "might be an acceptable proxy for a reasonably prudent investor's one-year investment, it is not sufficient to provide a rate of return on a 20-year investment." But the Constitution surely does not require Congress to establish different interest formulas based on the length of time required for resolution of particular litigation. Inter alia, the fortuity

In affirming the district court's judgment on this issue, the court of appeals explained that "there is nothing to suggest that the district court's adoption of the statutorily required rate constituted clear error; in light of the 'reasonably prudent investor' standard, we decline to reverse the district court's decision with respect to interest rates." Pet. App. 15a. The Sixth Circuit thus held only that, given the district court's factual determination that the DTA "provides [petitioner] what a reasonable and prudent investor would earn," *id.* at 14a (quoting *id.* at 26a), the district court had not committed clear error in adopting the statutory rate. The Sixth Circuit expressed no view about whether, or under what circumstances, a district court might ever be justified in using a formula other than that specified in the DTA to compute interest in a condemnation case.

c. Petitioner is therefore wrong in contending (Pet. 13-14) that the Sixth Circuit's decision in this case conflicts with the Ninth Circuit's post-1986 ruling in *50.50 Acres*. And petitioner's claim of a conflict with pre-1986 court of appeals decisions (see Pet. 11-13) is wrong for two independent reasons. First, as explained above, the Sixth Circuit did not hold in this case that the current DTA formula is binding on the courts. Second, the formula set forth in the 1986 DTA amendments, which is tied to current market rates, may be regarded as a legis-

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that a particular lawsuit was unusually protracted—a fact that would not likely be apparent at the outset of the suit—has no evident bearing on what use of the additional funds a "reasonable and prudent" investor would have made if he had been fully compensated at the time of the taking. In order to avoid under-compensating condemnees whose cases take more than a year to resolve, the DTA requires interest to be compounded, and the applicable rate adjusted, on an annual basis. See 40 U.S.C. 3116(a)(2) (Supp. III 2003).

lative specification of the methodology to be used in determining what a "reasonable and prudent" investor would have earned during a particular period of time. By contrast, the pre-1986 six percent rate remained in effect for 55 years, and its application was unaffected by market fluctuations during that period. Decisions holding that courts under the pre-1986 DTA could make their own determinations of the rate of return that a "reasonable and prudent" investor might have earned, notwithstanding Congress's specification of a six percent rate, therefore have little bearing on the scope of judicial authority under the current statute.

Moreover, "[t]he constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness, as it[] does from technical concepts of property law." *United States* v. *Fuller*, 409 U.S. 488, 490 (1973) (citation omitted). The DTA promotes justice and fairness by seeking to eliminate the inconsistencies among cases and property owners that had been experienced prior to the 1986 amendments. Congress's legislative judgment about an appropriate methodology for addressing the problems created under prior law would at least be entitled to great judicial respect, whether or not it is regarded as "binding" upon the courts.

2. Petitioner argued in the district court that its just compensation award should reflect the potential for the two condemned parcels to function as part of an integrated whole that would have included the Ambassador Bridge. Petitioner thus sought "severance damages" —*i.e.*, compensation for the diminution in value of the Ambassador Bridge (which was not taken) that was allegedly caused by petitioner's loss of ownership of the neighboring parcels. See Pet. App. 38a-39a. In barring

petitioner from presenting that theory to the jury, the district court noted that "the Government's intention to take the property was made public prior to the time that [petitioner] purchased the parcels of property at issue." *Id.* at 47a. Petitioner contends (Pet. 20-26) that the court of appeals endorsed that rationale, and that this purported holding conflicts with this Court's precedents. That argument lacks merit and does not warrant review.

a. In holding that "there was no reasonable probability of the property in question being combined and used in conjunction with [petitioner's] Ambassador Bridge property in the reasonably near future," Pet. App. 48a, the district court did not rely solely or even primarily on the fact that the government's condemnation plan was apparent when petitioner bought the condemned tracts. Rather, the court also attached significance to the fact that "any integrated use of the condemned property with the Bridge was dependent upon the City of Detroit's vacating of 21st Street and Nash Sogoian's sale of his parcel of land to [petitioner]." *Id.* at 47a. The court explained that, "[a]s of the date of taking, no steps were taken by [petitioner] to effectuate the vacation of 21st Street and [petitioner's] own witness testified that Sogoian flatly refused to sell his property to [petitioner]." *Ibid.* The district court further observed that the evidence was "overwhelming" that petitioner's "intended integrated use of the property was for U.S. Customs to use it for truck inspection," *id.* at 48a, and the court explained that petitioner was not entitled to increased compensation based on the prospect of a distinctly governmental use of the land, see *id.* at 49a. Accord, *e.g.*, *United States* v. *Chandler-Dunbar Water Power Co.*, 229 U.S. 53, 80-81 (1913); *United States* v. *320.0 Acres of Land*, 605 F.2d 762, 781 (5th Cir. 1979);

United States v. *Weyerhaeuser Co.*, 538 F.2d 1363, 1366-1367 (9th Cir.), cert. denied, 429 U.S. 929 (1976); *United States* v. *46,672.96 Acres of Land*, 521 F.2d 13, 15-16 (10th Cir. 1975). Petitioner does not seek review of any question pertaining to those aspects of the district court's analysis, which provide fully sufficient (and largely fact-specific) grounds for the court's refusal to submit the "integrated use" theory to the jury.[3]

b. In affirming the district court's judgment, the Sixth Circuit did not discuss the legal significance of the evidence showing that petitioner had bought the relevant parcels with notice of the government's plan to condemn the land. Rather, the court of appeals quoted at length from the district court's opinion, see Pet. App. 9a-10a, and stated that the district court had "marshal[ed] a number of facts in support of its decision to preclude the jury from considering the valuation theories proposed by [petitioner]," *id.* at 11a. Although the court of appeals stated that it "detect[ed] no error in either [the district court's] factual findings or in their application to the subsequent jury instructions," *ibid.*, the court did not explicitly address the question on which petitioner seeks review.

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[3] Petitioner suggests in passing (Pet. 22 n.13) that the district court excluded valuation evidence based on potential integrated uses other than use of the condemned parcels as a customs inspection facility. The testimony on which petitioner relies referred in general terms to the potential use of the condemned parcels for "expansion" of the Bridge or to provide "additional flexibility." Pet. App. 123a. The only *specific* potential use of the parcels that the witness identified, however, was potential use as the site of inspection facilities. See *id.* at 124a-125a. In any event, the district court's assessment of the record evidence on this point raises no legal issue of broad significance, and no challenge to the district court's findings as to potential integrated uses is fairly encompassed by the questions presented.

There is consequently no basis for petitioner's contention (Pet. 22) that the Sixth Circuit's decision "rested primarily on the court's finding that the government's plans to condemn the two parcels had been made public before [petitioner] acquired the parcels." And even if the Sixth Circuit had unequivocally endorsed the legal proposition that petitioner finds objectionable, the presence of independent grounds for affirmance would make this case an unsuitable vehicle for this Court's resolution of the question presented.[4]

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[4] Even if the Sixth Circuit had issued the holding that petitioner attributes to it, the decision below would not squarely conflict with any of this Court's precedents or with decisions of other courts of appeals. Although this Court has held that changes in property value attributable to the government's anticipated use of its condemnation power should generally be ignored in determining just compensation under the "fair market value" standard, see, *e.g.*, *United States* v. *Virginia Elec. & Power Co.*, 365 U.S. 624, 635-636 (1961); *United States* v. *Cors*, 337 U.S. 325, 332 (1949); *City of New York* v. *Sage*, 239 U.S. 57, 61 (1915), the Court has not addressed the specific question whether a landowner who acquires property with knowledge of the government's intent to condemn it may obtain a just compensation award that is premised on the potential use of that land in combination with other parcels, and petitioner acknowledges (Pet. 22 n.12) that no circuit conflict exists on this issue.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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